

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JAMES E. BOWELL,)
12 Plaintiff,) No. C 06-02836 JW (PR)
13 vs.) ORDER DENYING MOTION FOR
14 GOV. SCHWARZENEGGER, et al.,) EMERGENCY ORDER
15 Defendant(s).) (Docket No. 4)
16 _____)
17)

18 Plaintiff, a prisoner at the Salinas Valley State Prison (“SVSP”), has filed a
19 pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff seeks an emergency
20 order of transfer to a federal holding detention center and a temporary restraining
21 order (“TRO”)/ preliminary injunction not to be double-celled. (Docket No. 4)

22 Plaintiff’s request for a transfer to a federal holding detention center
23 is DENIED because it is well-established that prisoners have no constitutional right
24 to incarceration in a particular prison. See Olim v. Wakinekona, 461 U.S. 238, 244-
25 48 (1983). Plaintiff’s motion for a TRO/preliminary injunction is DENIED without
26 prejudice for failure to satisfy the requirements of Federal Rule of Civil Procedure

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1 65. Prior to granting a preliminary injunction, notice to the adverse party is
2 required. Fed. R. Civ. P. 65(a)(1). A motion for preliminary injunction therefore
3 cannot be decided until the parties to the action are served, and they have not yet
4 been served here. See Zepeda v. INS, 753 F.2d 719, 727 (9th Cir. 1983). A TRO
5 may be granted without written or oral notice to the adverse party or that party's
6 attorney if: (1) it clearly appears from specific facts shown by affidavit or by the
7 verified complaint that immediate and irreparable injury, loss or damage will result
8 to the applicant before the adverse party or the party's attorney can be heard in
9 opposition, and (2) the applicant's attorney (plaintiff himself in this case, as he
10 proceeds pro se) certifies in writing the efforts, if any, which have been made to give
11 notice and the reasons supporting the claim that notice should not be required. Fed.
12 R. Civ. P. 65(b). Plaintiff has not satisfied both requirements.

13 This order terminates Docket No. 4. The Court will address the merits of
14 plaintiff's amended complaint, filed March 28, 2007, in a separate order.

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16 DATED: June 7, 2007

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JAMES WARE
United States District Judge